

**NEVADA DEPARTMENT OF CORRECTIONS  
ADMINISTRATIVE REGULATION  
421**

**CUSTODIAL SEXUAL MISCONDUCT,  
INMATE SEXUAL OFFENSES, AND PRISON RAPE ELIMINATION ACT**

**Supersedes:** AR 421 (02/12/10, Temporary 12/03/12)

**Effective:** 12/17/12

**AUTHORITY:** NRS 200.366, NRS 201.210, NRS 201.220, NRS 201.230, NRS 209.131, NRS 212.187, 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115

**RESPONSIBILITY**

It is the responsibility of all employees, inmates, volunteers, and contractors who are under the jurisdiction of or who conduct business with the Nevada Department of Corrections (“Department”) to understand and follow this regulation.

**421.01 ZERO TOLERANCE**

1. The Department has a Zero Tolerance policy for any form of sexual misconduct to include staff/contractor/or volunteer on inmate or inmate on inmate sexual harassment, sexual assault, sexual abusive contact and consensual sex. Any staff member/contractor/volunteer who engages in, fails to report, or knowingly condones sexual harassment or sexual contact with or between inmates shall be subject to disciplinary action and may be subject to criminal prosecution. The Department shall take a proactive approach regarding the prevention, detection, response and punishment of any type of sexual contact.
2. Substantiated allegations of conduct that appears to be criminal in nature shall be referred for prosecution.
3. The Department prohibits retaliation against any person because of his/her involvement in the reporting or investigation of a complaint.

**421.02 PREA COORDINATOR**

1. It is the responsibility of the Prison Rape Elimination Act (PREA) coordinator to develop, implement, and oversee the Department’s compliance with all PREA standards.
2. PREA coordinator will collect accurate, uniform data for every allegation of sexual abuse at institutions/facilities.

### **421.03 PREA COMPLIANCE MANAGERS**

1. The Deputy Director of Operations will designate a PREA compliance manager at each institution/facility to coordinate the institution/facility's compliance with the PREA standards.

A. The institution/facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including investigations where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Refer to the confidential PREA Manual for the requirements of who participates and what shall be reviewed.

2. The PREA coordinator and the institutional/facility PREA managers will facilitate the development of confidential PREA policies.

### **421.04 STAFF DUTY TO REPORT MISCONDUCT**

1. Any Departmental employee who becomes aware of any alleged act of misconduct by another Department employee is required to report in a timely manner the information to his or her immediate supervisor.

A. In the event that the allegations of misconduct concern the employee's immediate supervisor, the employee should report this information up the chain of command. The report of the alleged act of misconduct will not be referred to a staff member who is the subject of the accusation.

2. Any employee who witnesses or receives a report that an inmate is being or has been sexually abused or harassed by another inmate must report the incident to his/her immediate supervisor.

### **421.05 EMPLOYEE TRAINING**

1. All employees who may have contact with inmates will receive instruction on PREA in pre-service training.

A. All employees who may have contact with inmates will receive refresher training on PREA every two (2) years.

B. In years which an employee does not receive PREA refresher training the employee, shall receive refresher information on current PREA policies.

2. Training will be documented and confirmed by signature which will be maintained in employee's training files.

### **421.06 CONTRACTOR AND VOLUNTEER TRAINING**

1. The Department shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the Department's sexual abuse and sexual harassment prevention, detection, and response policies and procedures. All volunteers and contractors who have contact with inmates will receive training on their responsibilities under the department's zero tolerance policy and procedures.

2. The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the Department's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.
3. Volunteers and contractors who have contact with inmates shall receive PREA training prior to entering any institution/facility.
4. The Department shall maintain documentation confirming that volunteers and contractors understand the training they have received.

#### **421.07 INMATE EDUCATION**

1. During initial intake orientation it is the responsibility of the institution/facility to ensure all inmates receive information explaining the Department's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment during the intake process.
2. Within thirty (30) days of intake, the Department shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding Departmental policies and procedures for responding to such incidents.
3. The Department shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.
4. The Department shall maintain documentation of inmate participation in these education sessions.
5. In addition to providing such education, the Department shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

#### **421.08 INMATE SCREENING**

1. All inmates shall be assessed during an intake screening and upon transfer to another institution/facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

#### **421.09 REPORTING**

1. Inmates, visitors, inmate family members or associates, and other community members can privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

A. Such reporting can include, but not limited to:

- (1) Verbal complaints to any Departmental employee;

(2) Written complaints, which may be made through the following processes:

a. Inmate grievances

i. Grievances alleging staff on inmate sexual misconduct or inmate on inmate sexual abuse will be forwarded immediately to the Appointing Authority and followed by a confidential report completed in Nevada Offender Tracking Information System (NOTIS).

ii. A copy of the grievance will be forwarded to the PREA Coordinator and Office of the Inspector General for review and investigation.

b. Inmate kites, written notes or letters to staff or administrators, and letters directed to the PREA Coordinator or any member of the Inspector General's Office.

(3) NDOC Family Services Office by phone or email at [info@doc.nv.gov](mailto:info@doc.nv.gov).

(4) Writing the Nevada Attorney General's Office.

#### **421.10 MEDICAL AND MENTAL CARE**

1. As required under PREA standard 115.81 the medical division for the Department will establish confidential medical procedures for reports of possible PREA related incidents.

#### **421.11 REPORTING TO OTHER CONFINEMENT FACILITIES**

1. All institutions/facilities are responsible to have a policy and procedure in place that upon receipt of an allegation that an inmate was sexually abused while confined at another institution/facility, the shift supervisors of the institution/facility that received the allegation shall notify the PREA coordinator and initiate an incident report.

A. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

B. The PREA coordinator shall document that they have received such notification.

2. The PREA coordinator will notify the institution/facility in which the inmate alleged the incident occurred.

3. The PREA coordinator will ensure the allegation is investigated in accordance with this standard.

#### **421.12 CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS**

1. NDOC Office of the Inspector General will investigate all allegations of staff on inmate sexual abuse, sexual harassment and inmate on inmate sexual abuse.

2. The departure of the alleged abuser or victim from the employment of the Department or control of the institution/facility shall not provide a basis for terminating an investigation.

3. All substantiated criminal cases shall be referred to the applicable prosecutorial authority for review of prosecution.

4. The investigator(s) assigned to investigate allegations of staff on inmate sexual abuse, sexual harassment and inmate on inmate sexual abuse will participate in the mandatory sexual abuse incident review panel at the conclusion of each of the investigations, with the established date for the review determined by the institutional PREA Manager. The sexual abuse incident review is mandatory in all allegations except those that are determined to be unfounded.

#### **421.13 DISCIPLINARY SANCTIONS FOR STAFF**

1. All Departmental staff shall be subject to disciplinary sanctions up to and including termination for violating Departmental sexual abuse or sexual harassment policies.

2. All terminations for violations of Departmental sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies and to any relevant licensing bodies.

#### **421.14 CORRECTIVE ACTION FOR CONTRACTORS AND VOLUNTEERS**

1. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

2. The institution/facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of Departmental sexual abuse or sexual harassment policies by a contractor or volunteer.

#### **421.15 DISCIPLINARY SANCTIONS FOR INMATES**

1. Inmates shall be subject to disciplinary sanctions pursuant to Administrative Regulation 707, Inmate Disciplinary Process, following a finding that the inmate engaged in inmate-on-inmate sexual abuse, sexual harassment or consensual sexual activity. Inmates shall be subject to administrative disciplinary sanctions.

A. Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

B. The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

2. The Department may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

3. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
4. The Department may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. The Department may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

#### **421.16 CONFIDENTIALITY ISSUES**

1. All case records associated with claims of staff sexual abuse, sexual harassment, inmate sexual abuse or any attempt thereof including written reports, investigation reports, evidence, inmate information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are confidential.
2. Violation of confidentiality regulations and procedures may result in disciplinary action.

#### **421.17 GENERAL DEFINITIONS**

1. **Contractor** means a person who provides services on a recurring basis pursuant to a contractual agreement with the Department.
2. **Employee** means a person who works directly for the Department or institution/facility.
3. **Substantiated allegation** means an allegation that was investigated and determined to have occurred.
4. **Unfounded allegation** means an allegation that was investigated and determined not to have occurred.
5. **Unsubstantiated allegation** means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
6. **Volunteer** means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the Department.
7. **Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts:**
  - A. Victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse.
  - B. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

**8. Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:**

- A. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight; Contact between the mouth and the penis, vulva, or anus;
- B. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- C. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- D. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or
- E. Where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- F. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs A-E of this section;
- G. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- H. Voyeurism by a staff member, contractor, or volunteer

(1) Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

9. **Sexual Activity:** Sexual contact including, but not limited to, sexual intercourse, deviant sexual behavior, kissing, fondling, and/or manipulation of the genitalia, buttocks, and breasts of another person in a manner which produces or is intended to produce sexual stimulation or gratification with the *consent of both persons*. Sexual activity can occur when the parties involved are clothed or unclothed.

10. **Sexual Coercion/Pressuring:** Compelling or inducing another person to engage in sexual activity by deceit, threats, force, intimidation, or personal favors.

11. **Sexual Solicitation:** The solicitation of another person to engage in sexual activity.

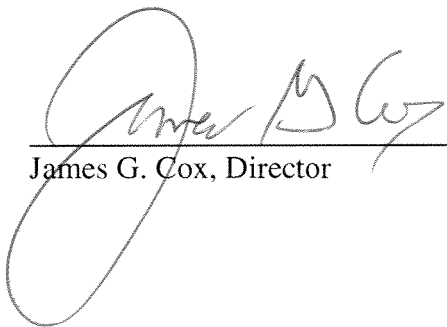
**12. Sexual harassment:**

- A. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

B. Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

## **APPLICABILITY**

1. This Administrative Regulation requires a confidential manual to be utilized by all staff.
2. This Administrative Regulation requires data collection by the Inspector General's Office and the Institutional PREA Manager, in support of internal audits.
3. This Administrative Regulation requires compliance with the U.S. Attorney General's National Standard to Prevent, Detect and Respond to Prison Rape, including but not limited to external audits.



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James G. Cox, Director

12/18/11

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Date